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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES RIDGEWAY, JAIME FAMOSO,
JOSHUA HAROLD, RICHARD BYERS,
DAN THATCHER, NINO PAGTAMA,
WILLIE FRANKLIN, TIM OPITZ, FARRIS
DAY, KARL MERHOFF, and MICHAEL
KROHN,

Plaintiffs,

v.

WAL-MART STORES, INC., a Delaware
corporation d/b/a WAL-MART
TRANSPORTATION LLC, and Does One
through and including Doe Fifty,

Defendants.

[Previously captioned as *Bryan et al. v. Wal-Mart Stores, Inc.*]

CASE NO. 3:08-cv-05221-SI

**DECLARATION OF JESSE A. CRIPPS IN
SUPPORT OF DEFENDANT WAL-MART
STORES, INC.'S (1) MOTION TO DECERTIFY
CLASS AND (2) MOTION FOR SUMMARY
JUDGMENT**

DECLARATION OF JESSE A. CRIPPS

I, Jesse A. Cripps, declare as follows:

1. I am an attorney admitted to practice law before this Court. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, and I am one of the attorneys responsible for the representation of Defendant Wal-Mart Stores, Inc. in the above-captioned action. I submit this declaration in support of (1) Wal-Mart's Motion to Decertify Class and (2) Wal-Mart's Motion for Summary Judgment. The following facts are within my personal knowledge and, if called and sworn as a witness, I would testify competently to these facts.

2. On January 19, 2016, at Plaintiffs' request, the Court approved a procedure by which Plaintiffs were able to select forty (40) class members to fill out a so-called "survey" prepared by Plaintiffs. Although Wal-Mart did not (and does not) agree that such a "survey" was appropriate, the process approved by the Court permitted Wal-Mart to depose those class members immediately after they completed the survey. Plaintiffs started serving deposition subpoenas in February 2016; and the depositions of the forty (40) class members did not conclude until May 4, 2016. Of the class members selected by Plaintiffs to receive a subpoena, five (5) class members refused to appear despite being served with a subpoena, one (1) class member appeared but opted out of the lawsuit, eight (8) class members were reported as deceased or physically unable to participate, one (1) former Wal-Mart driver testified that he had already settled a separate unrelated wrongful termination lawsuit with Wal-Mart which contained a general release of all claims, including all claims filed in this action, and Plaintiffs were unable to serve an additional fifty (50) class members.

3. In addition to the forty (40) class members selected by Plaintiffs, the parties also stipulated that Wal-Mart would be able to take depositions of ten (10) additional class members of their choosing. These depositions commenced June 14, 2016, and concluded June 27, 2016. Of the class members selected by Wal-Mart to receive a subpoena, two (2) class members appeared but opted out of the lawsuit. Wal-Mart was unable to serve three (3) class members. None of the class members served with a subpoena failed to appear.

1 4. Attached as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the
2 June 24, 2016 deposition of Thomas Abrams, taken in Victorville, California as recorded by certified
3 court reporter Amy P. Smith, CSR No. 12154.

4 5. Attached as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the
5 March 28, 2016 deposition of Doug Allen, taken in Fresno, California, as recorded by certified court
6 reporter Tanya L. Agostini, CSR No. 8124.

7 6. Attached as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the
8 March 18, 2016 deposition of Mark David Alumbaugh, taken in Bakersfield, California, as recorded
9 by certified court reporter Cindee L. LeFevre, CSR No. 7974.

10 7. Attached as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the
11 April 21, 2016 deposition of Michael Andrews, taken in Bakersfield, California, as recorded by
12 certified court reporter Cindee L. LeFevre, CSR No. 7974.

13 8. Attached as **Exhibit 5** is a true and correct copy of excerpts from the transcript of the
14 February 23, 2016 deposition of Donald Auker, taken in Red Bluff, California, as recorded by
15 certified court reporter Sharon L. Dunbar, CSR No. 4051.

16 9. Attached as **Exhibit 6** is a true and correct copy of excerpts from the transcript of the
17 October 17, 2013 deposition of Rick Aurit, taken in Rogers, Arkansas, as recorded by certified court
18 reporter Kerri Pianalto, CCR No. 651.

19 10. Attached as **Exhibit 7** is a true and correct copy of excerpts from the transcript of the
20 April 11, 2016 deposition of Michael Barker, as recorded by certified court reporter Jamie Yang.

21 11. Attached as **Exhibit 8** is a true and correct copy of excerpts from the transcript of the
22 May 10, 2016 deposition of James Batham, taken in Red Bluff, California, as recorded by certified
23 court reporter Craig W. Wood, RPR, CSR No. 9789.

24 12. Attached as **Exhibit 9** is a true and correct copy of excerpts from the transcript of the
25 July 7, 2016 deposition of Michael H. Belzer, taken in Los Angeles, California, as recorded by
26 certified court reporter Brenda R. Countz, CSR No. 12563.

1 13. Attached as **Exhibit 10** is a true and correct copy of excerpts from the transcript of the
2 March 15, 2016 deposition of Robert Benavidez, taken in Bakersfield, California, as recorded by
3 certified court reporter Wendy Haahes, RMR, CSR No. 4873.

4 14. Attached as **Exhibit 11** is a true and correct copy of excerpts from the transcript of the
5 June 14, 2016 deposition of David R. Berg, taken in Red Bluff, California, as recorded by certified
6 court reporter Celia A. Zarate, CSR No. 10769.

7 15. Attached as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the
8 February 22, 2016 deposition of Dana Brittan, taken in Redding, California, as recorded by certified
9 court reporter Tanya L. Agostini, CSR No. 8124.

10 16. Attached as **Exhibit 13** is a true and correct copy of excerpts from the transcript of the
11 June 24, 2016 deposition of Anthony Brown, taken in Victorville, California, as recorded by certified
12 court reporter Amy P. Smith CSR No. 12154.

13 17. Attached as **Exhibit 14** is a true and correct copy of excerpts from the transcript of the
14 March 15, 2016 deposition of Todd Brown, taken in Bakersfield, California, as recorded by certified
15 court reporter Wendy Haahes, RMR, CSR No. 4873.

16 18. Attached as **Exhibit 15** is a true and correct copy of excerpts from the transcript of the
17 February 29, 2016 deposition of Raymond Byer, taken in Red Bluff, California, as recorded by
18 certified court reporter Sharon L. Dunbar, CSR No. 4051.

19 19. Attached as **Exhibit 16** is a true and correct copy of excerpts from the transcript of the
20 June 24, 2016 deposition of Richard Byers, taken in Las Vegas, Nevada, as recorded by certified
21 court reporter Heidi K. Konsten, RPR, CCR No. 845, NCRA RPR No. 816435.

22 20. Attached as **Exhibit 17** is a true and correct copy of excerpts from the transcript of the
23 April 12, 2016 deposition of Bobby Carr, taken in Chico, California, as recorded by certified court
24 reporter Leian R. Ellis, CSR No. 7431.

25 21. Attached as **Exhibit 18** is a true and correct copy of excerpts from the transcript of the
26 February 16, 2016 deposition of Glen Craft, taken in Bakersfield, California, as recorded by certified
27 court reporter Melinda Martin, CSR No. 9240.

22. Attached as **Exhibit 19** is a true and correct copy of excerpts from the transcript of the June 14, 2016 deposition of Ronald Crone, taken in Red Bluff, California, as recorded by certified court reporter Celia A. Zarate, CSR No. 10769.

23. Attached as **Exhibit 20** is a true and correct copy of excerpts from the transcript of the June 27, 2016 deposition of Robert Davidson, taken in Red Bluff, California, as recorded by certified court reporter Sharon L. Dunbar, CSR No. 4051.

24. Attached as **Exhibit 21** is a true and correct copy of excerpts from the transcript of the December 18, 2013 deposition of Farris Day, taken in Fresno, California, as recorded by certified court reporter Anna M. Mulderrig, CSR No. 6827.

25. Attached as **Exhibit 22** is a true and correct copy of excerpts from the transcript of the June 23, 2016 deposition of Earl Elkins, taken in Red Bluff, California, as recorded by certified court reporter Sharon L. Dunbar, CSR No. 4051.

26. Attached as **Exhibit 23** is a true and correct copy of excerpts from the transcript of the February 23, 2016 deposition of David Evans, Jr., taken in Red Bluff, California, as recorded by certified court reporter Sharon L. Dunbar, CSR No. 4051.

27. Attached as **Exhibit 24** is a true and correct copy of excerpts from the transcript of the December 12, 2013 deposition of Jaime Famoso, taken in Los Angeles, California, as recorded by certified court reporter Leslie L. White, CSR No. 4148.

28. Attached as **Exhibit 25** is a true and correct copy of excerpts from the transcript of the February 17, 2016 deposition of Charles Fox, taken in Fresno, California, as recorded by certified court reporter Devra L. Joy, CSR No. 6459.

29. Attached as **Exhibit 26** is a true and correct copy of excerpts from the transcript of the June 21, 2016 deposition of Willie Franklin, taken in Houston, Texas, as recorded by certified court reporter Linda Rayburn, CSR No. 2965.

30. Attached as **Exhibit 27** is a true and correct copy of excerpts from the transcript of the March 21, 2016 deposition of Robert Anthony Garcia, taken in Costa Mesa, California, as recorded by certified court reporter Suzanne C. Scheller, CSR No. 12652.

1 31. Attached as **Exhibit 28** is a true and correct copy of excerpts from the transcript of the
2 February 26, 2016 deposition of John Goodman, taken in Bakersfield, California, as recorded by
3 certified court reporter Cindee L. LeFevre, CSR No. 7974.

4 32. Attached as **Exhibit 29** is a true and correct copy of excerpts from the transcript of the
5 June 28, 2016 deposition of Joshua Harold, taken in Fresno, California, as recorded by certified court
6 reporter Shelly A. Davis, CSR No. 8947.

7 33. Attached as **Exhibit 30** is a true and correct copy of excerpts from the transcript of the
8 February 19, 2016 deposition of Ivan J. Harris, taken in Riverside, California, as recorded by certified
9 court reporter Margaret M. Bourgeois, CSR No. 11569.

10 34. Attached as **Exhibit 31** is a true and correct copy of excerpts from the transcript of the
11 February 18, 2016 deposition of Matthew Allen Hartley, taken in San Diego, California, as recorded
12 by certified court reporter Renee Kelch, RPR, CLR, CSR No. 5063.

13 35. Attached as **Exhibit 32** is a true and correct copy of excerpts from the transcript of the
14 June 27, 2016 deposition of V. Paul Herbert, taken in Reno, Nevada, as recorded by certified court
15 reporter Constance S. Eisenberg, CCR #142.

16 36. Attached as **Exhibit 33** is a true and correct copy of excerpts from the transcript of the
17 June 22, 2016 deposition of Donald R. Hilton, taken in Reno, Nevada, as recorded by certified court
18 reporter Constance S. Eisenberg, CCR No. 142.

19 37. Attached as **Exhibit 34** is a true and correct copy of excerpts from the transcript of the
20 March 2, 2016 deposition of Bernard F. Johnston, III, taken in Victorville, California, as recorded by
21 certified court reporter Amy P. Smith, CSR No. 12154.

22 38. Attached as **Exhibit 35** is a true and correct copy of excerpts from the transcript of the
23 February 18, 2016 deposition of Frank Eugene LaCas, taken in San Diego, California, as recorded by
24 certified court reporter Renee Kelch, CSR No. 5063.

25 39. Attached as **Exhibit 36** is a true and correct copy of excerpts from the transcript of the
26 March 10, 2016 deposition of Robert Laurye, taken in Red Bluff, California, as recorded by certified
27 court reporter Craig W. Wood, RPR, CSR No. 9789.

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1 40. Attached as **Exhibit 37** is a true and correct copy of excerpts from the transcript of the
2 March 3, 2016 deposition of David Lopez, taken in Salt Lake City, Utah, as recorded by certified
3 court reporter Michelle Mallonee, RPR, CSR No. 267114-7801.

4 41. Attached as **Exhibit 38** is a true and correct copy of excerpts from the transcript of the
5 April 18, 2016 deposition of Michael Reyes Lopez, taken in Riverside, California, as recorded by
6 certified court reporter Suzanne C. Scheller, CSR No. 12652.

7 42. Attached as **Exhibit 39** is a true and correct copy of excerpts from the transcript of the
8 June 21, 2016 deposition of Joe Allen Mackey, taken in Bakersfield, California, as recorded by
9 certified court reporter Jennifer E. Hennagin, CSR No. 13559.

10 43. Attached as **Exhibit 40** is a true and correct copy of excerpts from the transcript of the
11 April 28, 2016 deposition of Stanley McCulley, taken in Red Bluff, California, as recorded by
12 certified court reporter Craig M. Wood, CSR No. 9789.

13 44. Attached as **Exhibit 41** is a true and correct copy of excerpts from the transcript of the
14 May 12, 2016 deposition of Dale McFall, taken in Red Bluff, California, as recorded by certified
15 court reporter Craig W. Wood, RPR, CSR No. 9789.

16 45. Attached as **Exhibit 42** is a true and correct copy of excerpts from the transcript of the
17 March 21, 2016 deposition of Bruce McKee, taken in Red Bluff, California, as recorded by certified
18 court reporter Craig W. Wood, RPR, CSR No. 9789.

19 46. Attached as **Exhibit 43** is a true and correct copy of excerpts from the transcript of the
20 March 18, 2016 deposition of Charles McLaughlin, taken in Fresno, California, as recorded by
21 certified court reporter Devra L. Joy, CSR No. 6459.

22 47. Attached as **Exhibit 44** is a true and correct copy of excerpts from the transcript of the
23 July 7, 2016 deposition of Karl Merhoff, taken in Red Bluff, California, as recorded by certified court
24 reporter Megan Frost, CSR No. 12884.

25 48. Attached as **Exhibit 45** is a true and correct copy of excerpts from the transcript of the
26 March 8, 2016 deposition of Oscar Montoya, taken in Fresno, California, as recorded by certified
27 court reporter Devra L. Joy, CSR No. 6459.

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1 49. Attached as **Exhibit 46** is a true and correct copy of excerpts from the transcript of the
2 February 26, 2016 deposition of Eric Gean Alfred Nettles, taken in Riverside, California, as recorded
3 by certified court reporter Suzanne C. Scheller, CSR No. 12652.

4 50. Attached as **Exhibit 47** is a true and correct copy of excerpts from the transcript of the
5 March 1, 2016 deposition of Kenneth Nevarez, taken in Redding, California, as recorded by certified
6 court reporter Craig W. Wood, RPR, CSR No. 9789.

7 51. Attached as **Exhibit 48** is a true and correct copy of excerpts from consecutively
8 paginated Volumes I and II of the transcript of the deposition of Timothy L. Opitz, taken on January
9 1, 2014, in Los Angeles, California, as recorded by certified court reporter Marla D. Sharp, RPR,
10 CLR, CCRR, CSR No. 11924, and continued on July 1, 2016, in Los Angeles, California, as recorded
11 by certified court reporter Leslie L. White, CSR No. 4148.

12 52. Attached as **Exhibit 49** is a true and correct copy of excerpts from the transcript of the
13 May 11, 2016 deposition of Wesley Powers, taken in Red Bluff, California, as recorded by certified
14 court reporter Christena Gray, CSR No. 9360.

15 53. Attached as **Exhibit 50** is a true and correct copy of excerpts from the transcript of the
16 March 23, 2016 deposition of Kevin Putnam, taken in Riverside, California, as recorded by certified
17 court reporter Suzanne C. Scheller, CSR No. 12652.

18 54. Attached as **Exhibit 51** is a true and correct copy of excerpts from the transcript of the
19 February 26, 2016 deposition of Michael Rand, taken in Los Angeles, California, as recorded by
20 certified court reporter Karen Aligo, CSR No. 13418.

21 55. Attached as **Exhibit 52** is a true and correct copy of excerpts from consecutively
22 paginated Volumes I and II of the transcript of the deposition of Charles Eugene Ridgeway, taken on
23 December 20, 2013, in Visalia, California, as recorded by certified court reporter Shelly A. Davis,
24 CSR No. 8947, and continued on July 6, 2016, in Visalia, California, as recorded by certified court
25 reporter Jennifer E. Hennagin, CSR No. 13559.

26 56. Attached as **Exhibit 53** is a true and correct copy of excerpts from the transcript of the
27 February 23, 2016 deposition of John Rivero, taken in Fresno, California, as recorded by certified
28 court reporter Devra L. Joy, CSR No. 6459.

1 57. Attached as **Exhibit 54** is a true and correct copy of excerpts from the transcript of the
2 May 10, 2016 deposition of Robby Robinson, taken in Fresno, California, as recorded by certified
3 court reporter Craig W. Wood, RPR, CSR No. 9789.

4 58. Attached as **Exhibit 55** is a true and correct copy of excerpts from the transcript of the
5 February 22, 2016 deposition of Greg Ryan, taken in Redding, California, as recorded by certified
6 court reporter Tanya L. Agostini, CSR No. 8124.

7 59. Attached as **Exhibit 56** is a true and correct copy of excerpts from the transcript of the
8 February 18, 2016 deposition of Daniel A. Steele, taken in Fresno, California, as recorded by
9 certified court reporter Devra L. Joy, CSR No. 6459.

10 60. Attached as **Exhibit 57** is a true and correct copy of excerpts from the transcript of the
11 March 22, 2016 deposition of Frank Temple, taken in Riverside, California, as recorded by certified
12 court reporter Suzanne C. Scheller, CSR No. 12652.

13 61. Attached as **Exhibit 58** is a true and correct copy of excerpts from consecutively
14 paginated Volumes I and II of the transcript of the deposition of Dan Thatcher, taken on December
15 19, 2013, in Fresno, California, as recorded by certified court reporter Anna M. Mulderrig, CSR No.
16 6827, and continued on June 29, 2016, in Fresno, California, as recorded by certified court reporter
17 Shelly A. Davis, CSR No. 8947.

18 62. Attached as **Exhibit 59** is a true and correct copy of excerpts from the transcript of the
19 February 17, 2016 deposition of Mario Trevino, taken in Fresno, California, as recorded by certified
20 court reporter Devra L. Joy, CSR No. 6459.

21 63. Attached as **Exhibit 60** is a true and correct copy of excerpts from the transcript of the
22 May 4, 2016 deposition of Angel Vasquez, taken in Fresno, California, as recorded by certified court
23 reporter Devra L. Joy, CSR No. 6459.

24 64. Attached as **Exhibit 61** is a true and correct copy of the survey taken by Doug Allen in
25 Redding, California on March 28, 2016, and attached as Exhibit A to his deposition.

26 65. Attached as **Exhibit 62** is a true and correct copy of the survey taken by James
27 Batham in Red Bluff, California on May 10, 2016, and attached as Exhibit A to his deposition.
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66. Attached as **Exhibit 63** is a true and correct copy of the survey taken by Robert Benavidez in Bakersfield, California on March 15, 2016, and attached as Exhibit A to his deposition.

67. Attached as **Exhibit 64** is a true and correct copy of the survey taken by Todd Brown in Bakersfield, California on March 15, 2016, and attached as Exhibit A to his deposition.

68. Attached as **Exhibit 65** is a true and correct copy of the survey taken by Glen Craft in Bakersfield, California on February 16, 2016, and attached as Exhibit A to his deposition.

69. Attached as **Exhibit 66** is a true and correct copy of the survey taken by Ivan Harris on February 19, 2016, and attached as Exhibit A to his deposition.

70. Attached as **Exhibit 67** is a true and correct copy of the survey taken by Bernard F. Johnston, III in Victorville, California on March 2, 2016, and attached as Exhibit A to his deposition.

71. Attached as **Exhibit 68** is a true and correct copy of the survey taken by Robert Laurye, in Red Bluff, California on March 10, 2016 and attached as Exhibit A to his deposition.

72. Attached as **Exhibit 69** is a true and correct copy of the survey taken by Stanley McCulley in Red Bluff, California on April 28, 2016, and attached as Exhibit A to his deposition.

73. Attached as **Exhibit 70** is a true and correct copy of the survey taken by Charles McLaughlin in Fresno, California on March 18, 2016, and attached as Exhibit A to his deposition.

74. Attached as **Exhibit 71** is a true and correct copy of the survey taken by Eric Gean Alfred Nettles in Riverside, California on February 26, 2016, and attached as Exhibit A to his deposition.

75. Attached as **Exhibit 72** is a true and correct copy of the survey taken by Kenneth Nevarez in Redding, California on March 1, 2016, and attached as Exhibit A to his deposition.

76. Attached as **Exhibit 73** is a true and correct copy of the survey taken by John Rivero in Fresno, California on February 23, 2016, and attached as Exhibit A to his deposition.

77. Attached as **Exhibit 74** is a true and correct copy of the survey taken by Daniel A. Steele, in Fresno, California on February 16, 2016, and attached as Exhibit A to his deposition.

78. Attached as **Exhibit 75** is a true and correct copy of the survey taken by Frank Temple in Riverside, California on March 22, 2016, and attached as Exhibit A to his deposition.

1 79. Attached as **Exhibit 76** is a true and correct copy of the survey taken by Mario
2 Trevino in Fresno, California on February 17, 2016, and attached as Exhibit A to his deposition.

3 80. Attached as **Exhibit 77** is a true and correct copy of Plaintiff Nino Pagtama's form
4 opting-out of the class action, signed on February 23, 2015.

5 81. Attached as **Exhibit 78** is a true and correct copy of Plaintiffs' Expert Designation,
6 served on May 13, 2016.

7 82. Attached as **Exhibit 79** is a true and correct copy of the Report of Dr. G. Michael
8 Phillips served by Plaintiffs on May 13, 2016.

9 83. Attached as **Exhibit 80** is a true and correct copy of the Report of V. Paul Herbert,
10 served by Plaintiffs on May 13, 2016.

11 84. Attached as **Exhibit 81** is a true and correct copy of the Report of Dr. Jonathan
12 Walker, served on Plaintiffs on May 13, 2016.

13 85. Attached as **Exhibit 82** is a true and correct copy of the Report of Robert Topel,
14 served by Wal-Mart on May 13, 2016.

15 86. Attached as **Exhibit 83** is a true and correct copy of Plaintiffs' First Supplemental
16 Disclosures, served on December 11, 2013.

17 87. Attached as **Exhibit 84** is a true and correct copy of Plaintiffs' Second Supplemental
18 Disclosures, served on December 17, 2013.

19 88. Attached as **Exhibit 85** is a true and correct copy of Plaintiffs' Third Supplemental
20 Disclosures, served on January 8, 2014.

21 89. Attached as **Exhibit 86** is a true and correct copy of Plaintiffs' Response to
22 Interrogatories, Set One, dated August 20, 2013, and served on August 21, 2013.

23 90. The Compendium of Rule 1006 Exhibits, filed concurrently with this Declaration, is a
24 set of demonstrative graphics that have been prepared by my office—and under my supervision and
25 direction—pursuant to Federal Rule of Evidence 1006 and which accurately summarize evidence that
26 has been submitted in connection with Wal-Mart's Motion to Decertify Class, including testimony,
27 declarations, surveys and Rule 26(a) disclosures. All of the evidence cited in the Rule 1006
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1 Compendium is either attached as an exhibit to this Declaration or else is already a part of the record
2 in this case.

3 I declare under penalty of perjury under the laws of the United States and the State of
4 California that the foregoing is true and correct, and that I executed this Declaration on the 8th day of
5 July, 2016 in Los Angeles, California.

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7 /s/ Jesse Cripps
8 Jesse Cripps
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